IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION NOs. 7638/2007, 8698/2007 & 8710 OF 2007 IN

SECOND APPEAL NO. 481 OF 2007

Anandrao Y. Solav vs. Shri Balasundari Devi Deosthan & Ors.

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : B.P. DHARMADHIKARI, J.
DECEMBER 20, 2007.

Shri Chauhan, learned counsel for the appellants/ applicants states that Respondent No.23 in application No.7638 of 2007 is not served. He prays that he being only a formal party, permission to delete him may be granted. Accordingly, Respondent No.23 is allowed to be deleted at the risk of the applicants/ appellants.

Civil Applications No.7638 of 2007 and 8710 of 2007 are by the appellants contending that as the Second Appeal is admitted against a decree whereby Respondent No.1 was declared as owner, the subsequent suit filed vide Civil Suit No.1 of 2006 for recovery of possession from the appellants by Respondent No.1 should be stayed.

Civil Application No.8698 of 2007 is filed contending that though suit for possession is filed, forceable possession of some portion is taken and construction of temple or some other similar building is undertaken by Respondent No.1. The photographs to show that construction has been undertaken are annexed along with the application.

During hearing a notice dated 15.11.2007 issued to Bala Sundari Devi Devasthan and Shri Anandrao Solav, is produced on record to show that the Municipal Council has objected to that construction and also to contend that in revenue records name of appellant No.1 is still mentioned. The prayer is, therefore, to restrain Respondent No.1 from proceeding further with the construction.

Shri Gaikwad, learned counsel appearing for respondent No.1 has stated that Civil Suit No.1 of 2006 is not filed by Respondent No.1 and it is filed by the Trustees who are on record before the Deputy Charity Commissioner. He further contends that there was a temple about 200 years old and the portion on which

construction was undertaken was always open. He contends that it was never a case of present appellants that said portion was in their possession. He further argues that construction is almost over and only finishing touches are being given. He also states that if any decree is passed in Civil Suit No. 1 of 2006, the said decree can be challenged by present appellants in accordance with law. Lastly, he contends that the suit is pending since last more than 30 years and hence the present Second Appeal should be expeditiously heard.

After hearing parties, it is apparent that Second Appeal has been admitted on substantial question of law as to whether Civil Court possessed or did not possess jurisdiction to adjudicate title of land in dispute. The appellants claimed that land belonging to them while Respondent No.1 claims that it belongs to Public Trust. Subsequently, the Public Trust has been registered. It is, therefore, apparent that decision on this issue will have substantial impact on adjudication in Civil Suit No. 1 of 2006 wherein on the basis of declaration of title in favour of trust, the trustees are trying

to recover the possession.

However, considering the fact that dispute is quite old, I am not inclined to stay Civil Suit or even the operation and effect of the impugned judgment in this Second Appeal.

It is made clear that the decree for possession, if passed in Civil Suit No. 1 of 2006, the same shall not be executed without further orders of this Court in the matter.

Insofar as Civil Application No.8698 of 2007 is concerned, in view of the photographs produced on record and also in view of statement made by Shri Gaikwad, learned counsel, it appears that construction has already progressed further and hence at this juncture, it will not be appropriate to stall it. Shri Gaikwad, learned counsel has during hearing stated that Respondent No.1 or Trustees will not claim any relief in equity on the basis of structure of temple completed during the pendency of Second Appeal.

In view of the statement made, it is clear that interest of present appellants is sufficiently protected. Civil Application No.

8698 of 2007 is rejected. The parties are at liberty to move for early hearing of Second Appeal after making available paper book of Second Appeal.

The photographs and notice dated 15.11.2007 issued by the Chief Executive Officer, Nagar Parishad, Shendurjanaghat, is retained on record.

All three applications are thus disposed of.

JUDGE

*GS.